



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2018-0508; FRL-9981-69-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland;

Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Under the 2008 Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Maryland. The State of Maryland's SIP revision satisfies the volatile organic compound (VOC) reasonably available control technology (RACT) requirements under the 2008 8-hour ozone national ambient air quality standard (NAAQS). The State of Maryland will address RACT for oxides of nitrogen (NO_x) in another SIP submission. Maryland's RACT submittal for the 2008 ozone NAAQS includes (1) certification that previously adopted RACT controls in Maryland's SIP that were approved by EPA under the 1-hour ozone and 1997 8-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and that they continue to represent RACT; (2) a negative declaration demonstrating that no facilities exist in the state for the applicable control technique guideline (CTG) categories; and (3) adoption of new or more stringent RACT determinations. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2018-0508 at <http://www.regulations.gov>, or via email to spielberger.susan@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Gregory A. Becoat, (215) 814 2036, or by e-mail at becoat.gregory@epa.gov.

SUPPLEMENTARY INFORMATION: On August 18, 2016, the Maryland Department of the Environment (MDE) submitted a revision to its SIP that addresses the requirements of RACT under the 2008 8-hour ozone NAAQS.

I. Background

A. General

Ozone is formed in the atmosphere by photochemical reactions between VOCs and NO_x in the

presence of sunlight. In order to reduce these ozone concentrations, the CAA requires control of VOC and NO_x emission sources to achieve emission reductions in moderate or more serious ozone nonattainment areas. Among effective control measures, RACT controls significantly reduce VOC and NO_x emissions from major stationary sources.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.¹ Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NO_x or VOC emissions above a certain applicability threshold that is based on the ozone nonattainment classification of the area: Marginal, Moderate, Serious, or Severe. *See* “major stationary source” in CAA sections 182(b), 184(b) and 302. Sections 182(b)(2) and 182(f)(1) of the CAA require states with moderate (or worse) ozone nonattainment areas to implement RACT controls on all stationary sources and source categories covered by a CTG document issued by EPA and on all major sources of VOC and NO_x emissions located in the area. EPA’s CTGs establish presumptive RACT control requirements for various VOC source categories. The CTGs typically identify a particular control level that EPA recommends as being RACT. In some cases, EPA has issued Alternative Control Techniques guidelines (ACTs) primarily for NO_x source categories, which in contrast to the CTGs, only present a range for possible control options but do not identify any particular option as the presumptive norm for what is RACT. Section 183(c) of the CAA requires EPA to revise and update CTGs and ACTs

¹ *See* December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, “Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas.” *see also* 44 FR 53761, 53762 (September 17, 1979).

as the Administrator determines necessary. EPA issued eleven new CTGs from 2006 through 2008 for a total of 44 CTGs issued since November 1990. States are required to implement RACT for the source categories covered by CTGs through the SIP.

Section 184(a) of the CAA established a single ozone transport region (OTR), comprising all or part of 12 eastern states and the District of Columbia². The entire State of Maryland is part of the OTR and, therefore, must comply with the RACT requirements in section 184(b)(1)(B) and (2) of the CAA. Specifically, section 184(b)(1)(B) requires the implementation of RACT in OTR states with respect to all sources of VOC covered by a CTG. Additionally, section 184(b)(2) states that any stationary source with the potential to emit 50 tons per year (tpy) of VOCs shall be considered a major source and requires the implementation of major stationary source requirements in the OTR states as if the area were a moderate nonattainment area. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NO_x or VOC emissions above a certain applicability threshold that is based on the ozone nonattainment classification of the area: Marginal, Moderate, Serious, or Severe. *See* “major stationary source” in CAA sections 182(b) and 184(b).

B. Maryland’s History

Maryland has been subject to the CAA RACT requirements because of previous ozone nonattainment designations. The Baltimore (which includes Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties, MD, and Baltimore City, MD), Washington D.C. (which includes Calvert, Charles, Frederick, Montgomery, and Prince George's Counties, MD), and Philadelphia (which includes Cecil County, MD) nonattainment areas were designated as severe 1-hour ozone nonattainment areas. Kent and Queen Anne’s Counties, MD were designated as a marginal 1-hour ozone nonattainment area. The remaining Maryland counties were statutorily

² Only a portion of the Commonwealth of Virginia is included in the OTR.

identified as moderate nonattainment because they are in the OTR. Since the early 1990s, Maryland has implemented numerous RACT controls throughout the State to meet the CAA's RACT requirements under the 1-hour and the 1997 8-hour ozone standards. Maryland also implemented controls necessary to meet the requirements of the NO_x SIP Call (40 CFR 51.121). Under the 1997 8-hour ozone NAAQS, the Baltimore, Washington D.C., and Philadelphia areas were designated as serious nonattainment areas. Kent and Queen Anne's Counties, MD were designated as a marginal ozone nonattainment area. The remaining Maryland counties were statutorily identified as moderate nonattainment because they are in the OTR. As a result, Maryland continued to be subject to the CAA RACT requirements. See 69 FR 23858, 23931 (April 30, 2004). Maryland revised and promulgated its RACT regulations and demonstrated that it complied with the 1997 CAA RACT requirements in a SIP revision approved by EPA on July 13, 2012 (77 FR 41278).

Under CAA section 109(d), EPA is required to periodically review and promulgate, as necessary, revisions to the NAAQS to continue to protect human health and the environment. On March 27, 2008, EPA revised the 1997 8-hour ozone standard by lowering the 8-hour standard to 0.075 ppm level (73 FR 16436). On May 21, 2012, EPA finalized attainment/nonattainment designations for the 2008 8-hour ozone NAAQS (77 FR 30087). Under the 2008 8-hour ozone standard, EPA designated as nonattainment three areas that contain portions of Maryland. These nonattainment areas are: the Baltimore moderate nonattainment area; the Washington D.C. marginal nonattainment area; and the Philadelphia marginal nonattainment area. All other remaining Maryland counties are part of the OTR. As a result, the entire State of Maryland is required to address the CAA RACT requirements by submitting to EPA a SIP revision that demonstrates how Maryland meets RACT requirements under the revised 2008 ozone standard.

Maryland is required to implement RACT for the 2008 ozone NAAQS on all VOC sources covered by a CTG issued by EPA, as well as all other major stationary sources located within the state boundaries. The RACT requirements under CAA sections 182 and 184 apply to CTG sources, including eleven new CTGs that EPA issued between 2006 and 2008, and any other major stationary sources of VOC or NO_x. Maryland has retained its major source thresholds at 25 tpy for VOC and NO_x sources in the Baltimore, Washington, D.C., and Philadelphia severe 1-hour ozone nonattainment areas. Maryland has retained its major source thresholds at 50 tpy for VOC and 100 tpy for NO_x in all remaining Maryland counties, consistent with the CAA requirements for States in the OTR.

C. EPA Guidance and Requirements

EPA has provided more substantive RACT requirements through final implementation rules for each ozone NAAQS, as well as guidance. On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (the 2008 Ozone Implementation Rule). *See* 80 FR 12264. This rule addressed, among other things, control and planning obligations as they apply to nonattainment areas under the 2008 8-hour ozone NAAQS, including RACT and RACM. In this rule, EPA specifically required that states meet the RACT requirements either (1) through a certification that previously adopted RACT controls in their SIP revisions approved by EPA under a prior ozone NAAQS continue to represent adequate RACT control levels for attainment of the 2008 8-hour ozone NAAQS, or (2) through the adoption of new or more stringent regulations or controls that represent RACT control levels. A certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data. Adoption of new RACT regulations will occur when states have new stationary sources not covered by existing

RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. Additionally, states are required to submit a negative declaration if there are no CTG major sources of VOC and NO_x emissions within the nonattainment area in lieu of, or in addition to, a certification.

II. Summary of SIP Revision

On August 18, 2016 Maryland submitted a SIP revision to address all of the CAA RACT requirements of RACT set forth by the CAA under for the 2008 8-hour ozone NAAQS (the 2016 RACT Submission). Specifically, Maryland's 2016 RACT Submission includes: (1) a certification that for certain categories of sources, previously-adopted VOC RACT controls in Maryland's SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS continue to be based on the currently available technically and economically feasible controls, and continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; (2) the adoption of new or more stringent regulations or controls that represent RACT control levels for certain categories of sources; and (3) a negative declaration that certain CTG or non-CTG major sources of VOC sources do not exist in Maryland.

Most of Maryland's Regulations and Statutes, under Code of Maryland Regulations (COMAR) 26.11.06, 26.11.10, 26.11.11, 26.11.13, 26.11.14, 26.11.19 and 26.11.24, contain the VOC RACT controls that were implemented and approved into Maryland's SIP under the 1-hour and 1997 8-hour ozone NAAQS. Maryland also relies on COMAR 26.11.06.06 - "General Emissions Standards, Prohibitions, and Restrictions -Volatile Organic Compounds," to achieve significant reductions from unique VOC sources. Maryland is certifying that these regulations, all previously approved by EPA into the SIP, continue to meet the RACT requirements for the 2008 8-hour ozone NAAQS for major stationary sources of VOCs and CTG-covered sources of

VOCs. Maryland also submitted a negative declaration for the CTGs that have not been adopted due to no affected facilities in Maryland, and included Alternative Control Technology (ACTs) in their review of applicable 2008 8-hour ozone RACT requirements. Maryland considered controls on other sources of VOCs not covered by a CTG and adopted rules whenever deemed to be reasonably available controls. Additionally, Maryland conducted a RACT analysis for each major Non-CTG stationary source of VOC. As previously discussed, Maryland retained its major source levels at 25 tpy for VOC sources in the Baltimore, Washington, D.C. and Philadelphia 1-hour severe nonattainment areas. All remaining counties which are part of the OTR major source levels remain at 50 tpy for VOC. More detailed information on these provisions as well as a detailed summary of EPA's review can be found in the Technical Support Document (TSD) for this action which is available on line at www.regulations.gov, Docket number EPA-R03-OAR-2018-0508.

III. Proposed Action

EPA has reviewed Maryland's 2016 RACT Submission and is proposing to approve Maryland's SIP revision on the basis that Maryland has met the RACT requirements for the 2008 8-hour ozone NAAQS as set forth by sections 182(b) and 184(b)(2) of the CAA. Maryland's SIP revision satisfies the 2008 8-hour ozone NAAQS RACT requirements through (1) certification that previously adopted RACT controls in Maryland's SIP that were approved by EPA under the 1-hour ozone and 1997 8-hour ozone NAAQS continue to be based on the currently available technically and economically feasible controls, and that they continue to represent RACT; (2) a negative declaration demonstrating that no facilities exist in the state for certain the applicable CTG categories; and (3) adoption of new or more stringent RACT determinations when technically and economically feasible. EPA finds that Maryland's 2016 RACT Submission

demonstrates that the State has adopted air pollution control strategies that represent RACT for the purposes of compliance with the 2008 8-hour ozone standard for all major stationary sources of VOC. EPA finds that Maryland's SIP implements RACT with respect to all sources of VOCs covered by a CTG issued prior to July 20, 2014, as well as represents RACT for all CTG VOC major stationary sources. EPA is soliciting public comments on the issues discussed in this document relevant to RACT requirements for Maryland for the 2008 ozone NAAQS. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference source-specific RACT determinations under the 2008 8-hour ozone NAAQS for certain major sources of VOC emissions. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, Maryland's 2008 8-hour ozone RACT SIP revision does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: July 24, 2018.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

[FR Doc. 2018-16603 Filed: 8/2/2018 8:45 am; Publication Date: 8/3/2018]